

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

April 19, 2012

In the Matter of E. RAINEY, Minor.

No. 306216

Ingham Circuit Court

Family Division

LC No. 10-000081-NA

Before: HOEKSTRA, P.J., and SAWYER and SAAD, JJ.

PER CURIAM.

Respondent appeals as of right the trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). Because we conclude that the trial court did not clearly err, we affirm.

The Department of Human Services (DHS) petitioned for the removal of the minor child in January 2010; the petition alleged physical neglect, improper care and supervision, and domestic violence. The trial court found probable cause to remove the minor child due to concerns regarding domestic violence in the home and suspected drug use. On January 28, 2010, the trial court took jurisdiction over the minor child after respondent entered a plea to the petition. A disposition order was filed on February 25, 2010, outlining the guidelines that respondent was to follow and allowing for parenting time at the discretion of the foster care worker. Among other directives, the trial court ordered that respondent: not possess illegal drugs or alcoholic beverages; make and keep all appointments for substance abuse assessment and participate in treatment; submit to drug testing; make and keep all appointments for psychological and psychiatric evaluations; participate in and benefit from therapy; attend and participate in parenting classes and demonstrate concepts taught; and participate in parenting time.

Review hearings took place on May 20, 2010, August 19, 2010, November 18, 2010, and January 14, 2011. On April 12, 2011, a permanency hearing was held and petitioner filed a supplemental petition for termination of respondent's parental rights. The termination hearing was held on August 22, 2011, and an order terminating respondent's parental rights was entered on August 24, 2011.

On appeal, respondent argues that the trial court erred when it determined that petitioner proved that the statutory grounds for termination were met by clear and convincing evidence.

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error a trial court's decision terminating parental rights. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours*, 459 Mich at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

In this case, respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which provide in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The first statutory ground for termination that the trial court found was proved by clear and convincing evidence is MCL 712a.19b(3)(c)(i), which considers whether the conditions leading to adjudication continue to exist. The conditions leading to adjudication in this case were the substantial risk of harm to the mental well being of respondent's young son and an unfit home environment by reason of respondent's use of illegal substances and exposing the child to domestic violence.

With regard to substance abuse, the evidence at the termination hearing established that most of the time respondent ignored her responsibility to provide urine samples, and did not take advantage of substance abuse counseling referrals despite acknowledgement of having an issue with marijuana dependence. Over the course of this case respondent missed the majority of her drug screens even though she knew that missed drops counted as positive. In the few months leading up to the termination hearing respondent was supposed to have her urine tested twice a week, but she missed all but one test. Respondent was twice referred to substance abuse treatment but attended only one intake session and never received treatment. At the time of the termination hearing, respondent's intensive substance abuse case manager testified that respondent's substance abuse issues were not addressed and that respondent needed substance abuse treatment and continued random drug screens.

Respondent also did not successfully deal with issues related to domestic violence. Respondent admitted that she had been abused by the child's putative father, and psychological testing revealed that she had difficulty determining healthy relationships. Petitioner referred respondent to two domestic violence programs, but she did not complete either program. There was no evidence that respondent received extensive domestic abuse counseling while she treated with her own counselor. And while respondent did leave the child's putative father, she reported to her own counselor that she felt emotionally abused by her friend. At the termination hearing, respondent identified her admittedly emotionally abusive friend and his family as her only support system. Based on the above summarized evidence, we conclude that the trial court did not clearly err in its determination that there was clear and convincing evidence proving the statutory grounds for termination set forth in MCL 712a.19b(3)(c)(i).

Because only one statutory ground for termination need be proven, *In re CR*, 250 Mich App 185, 207; 646 NW2d 506 (2002), any error in relying on § 19b(3)(g) or (j) as an additional ground for termination was harmless. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000). Nevertheless, clear and convincing evidence was admitted into the record to establish that respondent failed to provide proper care or custody for the child and there is no reasonable expectation that she will be able to do so within a reasonable time and that there is a reasonable likelihood that the child will be harmed if he is returned to the home of respondent.

Respondent did complete a parenting class, but demonstrated frustration in dealing with her child and did not make the most of her weekly visits with him. She was regularly late to parenting time and spent the limited time they had together talking to caseworkers or foster parents rather than with her son. Further, respondent had mental health issues but did not believe she needed assistance. Respondent found her own therapist, but provided no evidence that they worked on the issues relevant to this case, or that she made any progress on those issues. The therapist provided by petitioner had a pessimistic prognosis, stating specifically that it was going to take respondent "a long time to get anywhere." Respondent did not participate in the numerous services referred to her that were specifically designed to address her significant issues of substance abuse, domestic violence, and mental issues. Respondent never believed she needed help in these areas and thought she knew better than multiple trained professionals that had the safety and well-being of her child as their focus.

Concerns also existed about the stability of respondent's lifestyle. During the pendency of this case respondent lived in five different places and chose to live in locations that were some

distance from her son even though she did not have a driver's license and knew transportation would be an ongoing issue. Also, respondent had not demonstrated that she was capable of properly caring for her son considering his developmental issues. Accordingly, we cannot conclude that the trial court clearly erred when it determined that petitioner met its burden of proof in establishing one of the statutory grounds by clear and convincing evidence.

Respondent also argues that the trial court clearly erred in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19(b)(5); MCR 3.977(K).

We review the trial court's best-interest determination for clear error. MCR 3.977(K). "If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19(b)(5). A trial court may consider evidence on the whole record in making its best-interest determination. *In re Trejo*, 462 Mich at 353.

Respondent's son was two and a half years old at the time of the termination order, and he is a special needs child. While it was undisputed that respondent loved her son, there was no evidence of a parent-child bond between them. Despite receiving opportunities to participate in multiple services over the course of 17 months, respondent still labored with the same problems that had precipitated the child's initial removal from her custody. Respondent never demonstrated an ability to recognize and verbalize her own deficits. Respondent never showed that she could put the needs of her child before her own and provide a safe home for him and manage his care on a daily basis. Because of respondent's lack of progress and the child's need for permanency and stability, we detect no clear error in the trial court's finding that termination of respondent's parental rights served the child's best interests.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Henry William Saad